

**Section 749.2 Title 14, CCR, reads:**

**749.2 Special Order Relating to Incidental Take of Xantus's Murrelet (*Synthliboramphus hypoleucus*) During Candidacy Period.**

The commission finds that, based on current knowledge and protection, and management efforts outlined in this regulation, the level of take of Xantus's murrelet which is likely to occur during the period that this regulation is in effect will not cause jeopardy to the continued existence of the species.

**(a) Take Authorization**

Based upon the above findings, the commission authorizes the take of Xantus's murrelet during the candidacy period for each of the activities described below, subject to the terms and conditions specified for each activity.

**(1) Night-time Disturbance (light and noise) near Breeding Colonies.**

(A) Incidental take of Xantus's murrelet resulting from night-time (dusk to dawn) operation of a vessel is authorized all year outside the areas described in subsections (a)(1)(D) and (a)(1)(E).

(B) Incidental take of Xantus's murrelet resulting from night-time operation of a vessel from February 1 through July 15 within the areas described in subsections (a)(1)(D) and (a)(1)(E) is authorized only where such take occurs in compliance with each of the following restrictions:

1. the vessel is not engaged in night fishing or night diving;
2. external loud speakers on the vessel are not in use;
3. the vessel is within a designated anchorage or safe harbor from dusk to dawn, except when transiting through areas described in subsections (a)(1)(D) and (a)(1)(E); and
4. lighting on the vessel is limited to navigational lighting necessary for safe operations.

(C) Incidental take of Xantus's murrelet resulting from night-time operation of a vessel from July 16 through January 31 within the areas described in subsections (a)(1)(D) and (a)(1)(E) is authorized without the restrictions contained in subsection (a)(1)(B).

(D) **Santa Barbara Island:** from the mean high tide line extending 1 nm around the entire shoreline of Santa Barbara Island. Anchorages and safe harbors include Landing Cove (33° 28.9' N. lat. 119° 1.7' W. long.), and from Arch Point (33° 29.3' N. lat. 119° 1.6' W. long.) to the southernmost point of the island (33° 27.9' N. lat. 119° 2.1' W. long.).

(E) **Anacapa Island:** from the mean high tide line extending 1 nm around the entire shoreline of Anacapa Island. Anchorages and safe harbors include Landing Cove (34° 1' N. lat., 119° 21.6' W. long.) and Frenchy's Cove (34° 0.4' N. lat. 119° 24.4' W. long.).

**(2) Ongoing Research and Monitoring.**

(A) Public Agencies and Private Parties.

1. Take of Xantus's murrelet in the course of ongoing and currently permitted research and monitoring of this species by public agencies other than the Department and by private parties is authorized provided that a written, detailed project progress report describing objectives, methods (gear, sampling schedules and locations), efforts to minimize adverse effects to the species, and estimated level of take of the species shall be provided to the Department's Marine Regional Manager within 60 days of this regulation becoming effective.

2. Take of Xantus's murrelet incidental to the course of marine research by public agencies other than the Department and by private parties, using artificial night-lighting on vessels is authorized subject to the restrictions in subsection (a)(1).

3. At the discretion of the Department, research and monitoring activities not addressed by the above procedures may receive separate authorization for take of Xantus's murrelet by the Department pursuant to Fish and Game Code Section 2081.

Department of Fish and Game Contact: Regional Manager, Marine Region: 4665 Lampson Avenue, Los Alamitos, California 90720, (562) 342-7100.

**(3) Additions, Modifications or Revocation.**

(A) Incidental take of Xantus's murrelet from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084 or by the Department pursuant to Fish and Game Code Section 2081, on a case-by-case basis.

(B)The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of Xantus's murrelet.

**NOTE**

Authority: Sections 200, 202, 205, 240 and 2084, Fish and Game Code.

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